FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO. 16 OF 2001

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATE : 4th June, 2007.

Heard Shri Vyavahare, the learned counsel for the appellant.

The appellant is the original defendant. A suit was filed by the plaintiff/respondent for possession of the suit property. According to the plaintiff, the defendant/appellant had encroached upon the land belonging to the plaintiff trust. Both the Courts have concurrently held that the plaintiff trust was the owner of the suit land and the defendant had encroached upon 36 Sq. ft. of land. The claim of the defendant that the suit plot was granted to him by the Government was not accepted by both the Courts.

Shri Vyavahare, the learned counsel for the appellant, submitted that the Courts were not justified in holding that Exh.27, certified copy of the public document, was admissible in evidence as per Section 77 of the Evidence Act. According to the counsel for the appellant, the surveyor who had drawn the

original map ought to have been examined by the plaintiff for proving the same. It was then submitted on behalf of the appellant that the suit was not maintainable as the trust had not obtained the necessary permission of the Charity Commissioner under Section 50 of the Bombay Public Trust Act before instituting the present suit.

The submissions made on behalf of the appellant are liable to be rejected as Section 83 of the Evidence Act provides that maps or plans made for the purpose or any cause must be proved to be accurate and the Courts shall presume that the maps or the plans purportedly made by the authority, Central or State Government, were so made and are accurate.

I have perused the document Exh.27. The document Exh.27 is not a map or a plan made for the purpose of this suit, and therefore, it was not necessary for the plaintiff to prove that the same was accurate. The Courts had rightly presumed that the map drawn by the State authority was duly drawn and accurate as the plaintiff had produced the certified copy of the original map drawn by the State authority. The Courts rightly held that the plaintiff had proved document Exh.27 in view of the provisions of Section

77 of the Evidence Act. It clearly appears that the document Exh.27 is a certified copy of the map drawn by the State authority and is not a map drawn for the purpose of this particular suit. The Courts, therefore, held that it was not necessary to examine the surveyor for proving Exh.27. The second submission made on behalf of the appellant is also rejected on the ground that the appellant had not raised the aforesaid plea in the written statement. There was, therefore, no occasion for the Courts to consider the aforesaid plea.

Since no substantial question of law arises for consideration in this Second Appeal, the same is dismissed with no order as to costs.

JUDGE

APTE